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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.    | CONFIRMATION NO. |
|---|-------------|----------------------|------------------------|------------------|
| 10/657,651  | 09/08/2003  | Francesco Ferraiolo  | Provvisionato C-11     | 2833             |
| 23474   | 7590        | 09/01/2005           | EXAMINER               |                  |
| FLYNN THIEL BOUTELL & TANIS, P.C.<br>2026 RAMBLING ROAD<br>KALAMAZOO, MI 49008-1631 |             |                      | HORTON, YVONNE MICHELE |                  |
|   |             |                      | ART UNIT               | PAPER NUMBER     |
|   |             |                      | 3635                   |                  |
| DATE MAILED: 09/01/2005   |             |                      |                        |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                      |  |
|------------------------------|------------------------|----------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b>  |  |
|                              | 10/657,651             | FERRAIOLI, FRANCESCO |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>      |  |
|                              | Yvonne M. Horton       | 3635                 |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 08 September 2003.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 08 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

|   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Claim Objections***

It is not clear how the container can be identified in claim 1 as a "soil containing" member, but later in claim 8, be detailed as being filled with a liquid. Clarification and correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,836,129 to JAECKLIN. In reference to claims 1 and 10, JAECKLIN discloses the use of a protection barrier (MT) including a plurality of soil containing structures (GT) superimposed upon one another in such a way as to for vertical walls (column 4, lines 24-27) and a means for absorbing shock waves (FL) positioned inside the walls. JAECKLIN discloses the basic claimed barrier except for explicitly detailing two vertical

walls. Although JAECKLIN is silent in this regard, he does, however indicate that his members can be assembled to form a wall. Thus it would have been obvious to one having ordinary skill in the art at the time the invention was made that the members of JAECKLIN be capable of forming two walls since the mere duplication of essential parts of an invention involves only routine skill in the art. Regarding claims 2-5, the barrier (MT) further includes a transverse connecting means (NT) engaged with the vertical walls to increase the compactness of the barrier; wherein the transverse connecting means (NT) are vertical and horizontal panels made from mesh wire or netting, column 2, line 19 that are geosynthetic material, column 2, line 20. Regarding claims 6,7 and 9, the shock absorbing means (FL) are granular or pourable type material that also inherently have sound absorbing characteristics positioned inside the containers (GT). In reference to claim 8, JAECKLIN does not teach water as a filler; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a known material suitable for the use intended as an obvious matter of design choice. For instance, if the barrier is used to slow down cars upon impact but not damage the car, water would be better to serve as a filler instead of sand or gravel. Further regarding claim 10, the containers (GT) are box-shaped.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (571) 272-6845. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yvonne M. Horton  
Art Unit 3635  
4/16/05